IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1518 OF 1998

Anand Kumar Mittal, of
Delhi Indian Inhabitant,
carrying on business in
the firm, name and style
of M/s.Mittal Grain
Traders, as the Sole
Proprietor thereof having
his office at 2685, 2nd
floor, Naya Bazaar,
Delhi - 110 006 .. Petitioner.

V/s.

1. Union of India,

2. The Commissioner of Customs
& Excise, having his office
at 6th floor, New Customs
House Annexe, Ballard Estate,
Mumbai - 400 038

3. The Assistant Commissioner
of Customs, having his office
at New Custom House, Ballard
Estate, Mumbai - 400 038 .. Respondents.

Mr.Mihir Deshmukh i/b. M/s. Khaitan & Jaykar for the petitioner.

Mr.A.J. Rana, senior counsel with Mrs.S.V. Bharucha for the respondents.

**CORAM : R.M. LODHA &**
**J.P. DEVADHAR, JJ.**

**DATED : 23RD MARCH, 2006.**

ORAL JUDGMENT (Per R.M. Lodha, J.) :

Heard Mr.Mihir Deshmukh, the learned counsel for the petitioner and Mr.A.J. Rana, the learned senior counsel for the respondents.

2. The facts averred by the petitioner in this writ petition are thus :

i) The petitioner placed an order for purchase of 4535 metric tonnes of Brazilian White Crystal Sugar with M/s.Agrocorp International Pte. Limited.

ii) The foreign supplier shipped the aforesaid quantity of white sugar which arrived at the Port of Mumbai on board the vessel 'AR Raqib' on 6th March, 1998 and raised five invoices all dated 6th March, 1998.

iii) On 24th April, 1998 the petitioner filed five bills of entry with the Customs authorities.

iv) That White Crystal Sugar is exempted from duty vide notification No.11/97-cus and No.12/97-cus dated 1st March, 1997.

3. The Customs authorities declined to give benefit of the notification Nos.11/97-cus and 12/97-cus.

4. Constrained thereby, the petitioner filed the present writ petition praying that the respondents be directed to clear the goods covered by the five bills of entry filed on 24th April, 1998 without payment of duty as per the notification No.11/97-cus. and No.12/97-cus.

5. By the order dated 13th May, 1998, the learned Single Judge granted ad-interim order in terms of prayer clause (c). As a result of which the petitioner got the imported white sugar cleared without payment of duty.

6. In opposition to the writ petition, reply-affidavit has been filed by the Assistant Commissioner of Customs, Group - I, Mumbai. It is stated that the notification No.11/97-cus and No.12/97-cus were got amended by notification NO.15/98-cus and No.16/98-cus respectively which came into force on 28th April, 1998. It is also stated in the reply-affidavit that the final entry of inward of the vessel was made on 30th April, 1998 and under Section 15 of the Customs Act, 1962, the relevant date for charging the duty shall be that date and, accordingly, the petitioner is liable to pay the duty as per amended notification No.15/98-cus and

No.16/98-cus.

7. The learned senior counsel and the learned counsel are ad-idem that as per the notification No.11/97-cus and No.12/97-cus, on the import of White Sugar, no duty was leviable. That the notification No.11/97-cus and No.12/97-cus were amended by notification No.15/98-cus and No.16/98-cus is not in dispute. It is also not in dispute that the amended notifications were published on 28th April, 1998 and, thus, became effective from that date. That the entry of inward of the vessel was made on 30th April, 1998 and that that is the relevant date for charging the duty is also not contested.

8. From the aforesaid admitted position, it is clear that on 30th April, 1998 (the relevant date for charging the duty), the amended notification Nos.15/98-cus and 16/98-cus had come into force and that the petitioner was liable to pay duty as per the amended notifications.

9. As noticed above, the learned Single Judge by ad-interim order permitted clearance of goods without payment of duty or any other condition. That the petitioner is liable to pay duty is not in dispute now.

10. We, accordingly, dispose of the writ petition by following order :

i) The petitioner shall pay the duty payable as on 30th April, 1998 for clearance of the white sugar vide 5 bills of entry Exhibits B-1 to B-5 (Annexed with the writ petition) as per the notification No.15/98-cus and 16/98-cus along with simple interest at the rate of 6% per annum from the date of clearance of the goods until payment.

ii) The aforesaid payment of duty and interest shall be made by the petitioner within two months from today. In default, the respondent Nos.2 and 3 shall be at liberty to recover the due amount by initiating coercive process against the petitioner as per law.

iii) The petitioner shall also pay a cost of Rs.5,000/- towards cost of this writ petition to the respondents.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)